

EXHIBIT A

In Re:
PERFORADORA ORO NEGRO, S. DE R.L. DE C.V.
18-11094-scc

March 20, 2019

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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

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PERFORADORA ORO NEGRO, S. DE R.L. DE Main Case No.

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C.V., 18-11094-scc

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Debtor.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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March 20, 2019

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B E F O R E:

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HON. SHELLEY C. CHAPMAN

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U.S. BANKRUPTCY JUDGE

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Doc #172 Motion of Seadrill Limited to Quash 30(b)(6) Subpoena

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filed by Eloy A. Peral on behalf of Seadrill Limited

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PERFORADORA ORO NEGRO, S. DE R.L. DE C.V.

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1 P R O C E E D I N G S

2 THE COURT: Are you Ms. Shkolnik?

3 MS. SHKOLNIK: Yes. How are you?

4 THE COURT: Nice to meet you.

5 MS. SHKOLNIK: Nice to meet you in person.

6 MR. SOLEDAD: Good afternoon, Your Honor.

7 MR. PERAL: Good afternoon, Your Honor. Eloy Peral.

8 MR. SOLEDAD: Good afternoon, Your Honor.

9 THE COURT: Do you want to give -- I know who you are,
10 but why don't you tell Matt who you are, okay?

11 MR. SOLEDAD: Sure.

12 MR. PULECIO-BOEK: Daniel Puelcio on behalf of the
13 foreign representative, from Quinn Emanuel.

14 MR. SOLEDAD: Gabriel Soledad on behalf of the foreign
15 representative.

16 MS. CLARK: Sara Clark on behalf of the foreign
17 representative.

18 THE COURT: Okay. Ms. Shkolnik, I'll be only hearing
19 from you today?

20 MS. SHKOLNIK: Yes, Your Honor.

21 THE COURT: Okay. Very good. All right.

22 So have a seat. Have a seat.

23 So I have read the papers quite carefully. And I've
24 read the cases that you supplied. Thank you very much for
25 supplying them in such a user-friendly format.

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1 So I'm prepared to hear argument to the extent that
2 there's something not in the papers. I have some questions
3 that I'd like to ask. But if you have some prepared remarks
4 that you'd like to make, I'm happy to hear them.

5 MS. SHKOLNIK: Sure, Your Honor. I think maybe if you
6 have specific questions --

7 THE COURT: Yeah. I kind of found that the parties
8 were a bit of ships passing in the night on the issue and that
9 in my mind, it follows kind of a very clear waterfall or
10 decision tree type of analysis and that the parties -- both
11 sides kind of engaged in this back-and-forth that neither side
12 had cited a case supports -- supported what they want.

13 So the first principles are -- both Rule 45 and Rule
14 30(b)(6) apply. They both do. And your arguments seem to be
15 that the foreign representative is trying to violate Rule 45
16 because Mr. Leand is a foreign director. Right? And the other
17 two directors are new directors and don't have knowledge and
18 that somehow the current employees with knowledge because
19 they're all outside the 100-mile limitation, that somehow the
20 foreign representative was, in fact, aggregating that
21 hundred-mile limitation. And I don't think that's what they're
22 doing. And the cases that you cite, I don't really see how
23 they support your position.

24 So maybe one question is, not to turn this into a
25 quiz, but which case do you think supports your position most

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1 clearly? Because to be honest, I can't find one.

2 MS. SHKOLNIK: Sure, Your Honor. And if I could just
3 address what you said earlier --

4 THE COURT: Sure.

5 MS. SHKOLNIK: -- because I would frame the issue a
6 little bit differently.

7 THE COURT: Uh-huh.

8 MS. SHKOLNIK: We're here because we believe the law
9 supports that our motion to quash the subpoena should be
10 granted. And the reason is there are a number of cases, and I
11 can go through some of them, that set out the exact fact
12 pattern that we have here.

13 THE COURT: Okay. That's what -- I'm looking for the
14 exact fact pattern.

15 MS. SHKOLNIK: Right.

16 THE COURT: So what do you think is the exact fact
17 pattern?

18 MS. SHKOLNIK: So let me just kind of --

19 THE COURT: Yes.

20 MS. SHKOLNIK: -- go through our view and tell you
21 what the facts are and then what the cases are that apply. So
22 in our case, we -- within the hundred miles of the courthouse,
23 there is no one that has knowledge concerning the underlying
24 deposition.

25 THE COURT: Well, there is. There's Mr. Leand.

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1 MS. SHKOLNIK: Well --

2 THE COURT: He's just -- he's a former director.

3 MS. SHKOLNIK: Right. And they haven't cited a case
4 and we haven't found one that stands for the proposition that
5 that's a viable defense to Rule 45.

6 THE COURT: Well, but there is where immediately --
7 kind of veering off the road here. Here's what the -- the
8 30(b)(6), -- Rule 45 says what it says, hundred miles.

9 MS. SHKOLNIK: Right.

10 THE COURT: Otherwise, you can't compel.

11 MS. SHKOLNIK: Right.

12 THE COURT: Okay. Okay. So we have that. Then we
13 have 30(b)(6) which says that a corporation must designate.
14 And you can designate among different groups of people, current
15 or you can designate somebody else. So the foreign
16 representative -- so Mr. Leand is eligible to be designated.
17 He's a former director with knowledge. You've just chosen not
18 to do that. And the law requires that he consent.

19 MS. SHKOLNIK: Well, a couple points on Mr. Leand.
20 First of all, we don't represent him. Second of all, the
21 foreign representative has not made an allegation that we
22 control him. The --

23 THE COURT: You're misunderstanding the law. That's
24 fine that you don't represent him. But, nonetheless, he's your
25 former employee. I'm not suggesting that you can compel him.

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1 He is eligible. He is one of a category of persons who can be
2 designated under Rule 30(b)(6). And there are numerous cases
3 that say that.

4 MS. SHKOLNIK: But Rule 45 applies and limits Rule
5 30(b)(6).

6 THE COURT: Stay with me here.

7 MS. SHKOLNIK: Okay.

8 THE COURT: We're not talking about Rule 45. Mr.
9 Leand is within a hundred miles.

10 MS. SHKOLNIK: Yes.

11 THE COURT: As you point out, he has been already
12 separately served with a subpoena.

13 MS. SHKOLNIK: Yes.

14 THE COURT: So if Seadrill were to call Mr. Leand and
15 say, hello, Mr. Leand, you're our former director, you have
16 knowledge of the subject matter of this Rule 30(b)(6) subpoena,
17 would you be willing to be our designee and he says yes, we're
18 done. You have not represented that you have even asked him.
19 He cannot be compelled. You cannot compel him. And I cannot
20 compel him to be Seadrill's 30(b)(6) designee. Whether or
21 not -- he's got a subpoena. And if he's going to try to not
22 comply with that, I guess his counsel will tell me that.
23 That's not for today.

24 All that I'm talking about right now is there's
25 nothing in the case law that precludes Seadrill from going to

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1 its former director who has knowledge and he is within the 100
2 miles and asking him would you be willing to serve as our
3 designee. And if he says no, end of story with respect to Mr.
4 Leand as the corporate representative of Seadrill.

5 MS. SHKOLNIK: And there's nothing --

6 THE COURT: Do you disagree with what I just said?

7 MS. SHKOLNIK: I disagree. I'll tell you why, Your
8 Honor, because there's not -- I would frame it differently.
9 There's nothing in the case law that gives us an affirmative
10 duty to contact a former employee and say you, former employee,
11 please be our corporate representative.

12 THE COURT: There's nothing that requires you to.

13 MS. SHKOLNIK: And we decline to do so because --

14 THE COURT: Well, you -- but the fact that you decline
15 to do so, that's on you. You cannot say we decline to do so
16 and we're done. The law is clear that the rule says and the
17 case say that personal knowledge is not required. And the
18 cases say and have imposed duties on corporations or subpoenaed
19 parties to go out and find former employees or representatives.
20 If you decline to do so, that is your right. Make no mistake
21 about it. That is your right. But that doesn't relieve you of
22 your obligation to designate someone who is within the 100
23 miles unless you convince me that there's another reason to not
24 require that.

25 MS. SHKOLNIK: Well, 30(b)(6) specifically says that

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1 we get to designate who we feel would be the most appropriate
2 person. So --

3 THE COURT: Well, let's see --

4 MS. SHKOLNIK: To --

5 THE COURT: Let's see what is actually says.

6 MS. SHKOLNIK: Sure. And there's cases that we cite
7 that talk about the fact that we get to choose --

8 THE COURT: But the fact that you --

9 MS. SHKOLNIK: -- the designation.

10 THE COURT: The fact that you say Mr. Leand would be
11 the most appropriate person but we're not going to designate
12 him, and therefore, the most appropriate person is, therefore,
13 not required to serve, we win, that doesn't work. That's what
14 you're saying, is that all things being equal, the most
15 appropriate person is either Mr. Leand or one of your employees
16 in Norway or somewhere else.

17 MS. SHKOLNIK: But, Your Honor, that's not what we're
18 saying at all. You're putting an affirmative obligation on us
19 to go ahead and contact a former employee. And there's nothing
20 in the case law that says we need to do that. And more --

21 THE COURT: No, no.

22 MS. SHKOLNIK: But --

23 THE COURT: Ms. Shkolnik, you're -- listen to me very
24 carefully. I am not saying that you are required to. I am
25 saying that the cases make clear that a former employee falls

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1 into the category of, quote, designate other person who consent
2 to testify on its behalf. A former director falls into that
3 category that you may designate. If you don't want to
4 designate him, I can't force you to.

5 MS. SHKOLNIK: But I disagree with that, Your Honor.
6 I don't -- I haven't seen one case that says that a third party
7 has to go ahead and designate a former employee --

8 THE COURT: Well, you're not listening to me, Ms.
9 Shkolnik. I just said there is no case that says that a
10 30(b)(6) subpoenaed party has to go and designate a former
11 employee. I merely said that the cases recognize that a former
12 director or employee qualifies as, quote, an other person who
13 consents to testify on its behalf. That's all.

14 In other words, if you were to say to Preforadora
15 here's Mr. Leand, he consents to testify on our behalf, they
16 would have to accept that.

17 MS. SHKOLNIK: But they haven't even alleged that we
18 have the ability to do that --

19 THE COURT: Okay.

20 MS. SHKOLNIK: -- or that they've asked his counsel --

21 THE COURT: Let me try it one more time, okay? Let me
22 try it one more time. The case law is clear that Mr. Leand, if
23 asked and consents, would be an appropriate 30(b)(6) designee.
24 Nothing in the case law requires you to ask Mr. Leand. I will
25 not order you to ask Mr. Leand. The selection of a 30(b)(6)

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1 deponent is -- the duty to select is on, in this case,
2 Seadrill. You're telling me we decline to even ask Mr. Leand.
3 Okay. I can't force you to ask him. I'm merely pointing out
4 that it is an option available to you. You're not going to do
5 that. So therefore, we don't know whether he would consent or
6 not. You're just not going to do it, and I am not going to
7 order you to do it.

8 So we can put Mr. Leand aside except for we can't
9 ignore the fact that he's literally in the neighborhood of the
10 issuing court. And just as a matter of geography, he is.

11 MS. SHKOLNIK: Correct, Your Honor.

12 THE COURT: Okay. So do we -- are we now on the same
13 page?

14 MS. SHKOLNIK: We are on the same page.

15 THE COURT: Okay, great.

16 MS. SHKOLNIK: And in recognizing -- and I think we
17 pointed this out in the papers, that they actually already
18 subpoenaed Mr. Leand personally --

19 THE COURT: Yes.

20 MS. SHKOLNIK: -- and on behalf of AMA.

21 THE COURT: Right. But they want -- what they want
22 is -- and I haven't heard anything about whether he's
23 complying. But they want Mr. -- they are -- they want a
24 Seadrill 30(b)(6) witness, right?

25 MS. SHKOLNIK: Right.

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1 THE COURT: So the fact that they're going to get Mr.
2 Leand doesn't preclude or undermine or lessen their argument
3 for having a Seadrill 30(b)(6) witness because Mr. Leand is not
4 going to be it unless he consents.

5 MS. SHKOLNIK: Correct.

6 THE COURT: Right?

7 MS. SHKOLNIK: Right. But what --

8 THE COURT: Okay.

9 MS. SHKOLNIK: -- does lessen their 30(b)(6) argument
10 is Rule 45 which limits the people that can be designated or
11 can be forced to go ahead and appear.

12 THE COURT: Yes. And they're not asking for anybody
13 outside of the 100 miles. They're saying that your two current
14 directors are within the hundred miles and that their argument
15 is that Rule 30(b)(6) requires that one of them be educated
16 because all of the case law makes clear that personal knowledge
17 is not a requirement for a 30(b)(6) deponent. You have
18 successor cases. You have people-move-on cases. You have
19 time-goes-by cases when there's nobody around within the 100
20 miles who has knowledge.

21 The fact that there are people outside of the 100
22 miles that have knowledge, that doesn't mean that forcing
23 someone to be educated or causing someone to be educated who is
24 within the hundred miles -- that's not violating the 100-
25 mile --

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1 MS. SHKOLNIK: There's no case law to support that
2 proposition.

3 THE COURT: What about Wultz 2?

4 MS. SHKOLNIK: Wultz 2 is an outlier. So which --

5 THE COURT: You know, you say that, but I don't
6 understand your characterization of Wultz 2. Okay. Okay?

7 MS. SHKOLNIK: Let me explain, Your Honor. There are
8 this number of cases that stand for the proposition that, given
9 the fact pattern that we have here --

10 THE COURT: Show me one.

11 MS. SHKOLNIK: Sure. Estate of Klieman v. Palestinian
12 Authority is one, District of Columbia, in 2013. There, the
13 nonparty went ahead and they moved --

14 THE COURT: Hold on. Let me --

15 MS. SHKOLNIK: Sure.

16 THE COURT: Let me get that case.

17 Okay. So that's one of the BBC cases.

18 MS. SHKOLNIK: Right.

19 THE COURT: Okay. And all they had -- the only had
20 news bureau people in Washington, right?

21 MS. SHKOLNIK: Right. They had --

22 THE COURT: Okay.

23 MS. SHKOLNIK: They had people in Washington, D.C.
24 And they had people in London. The people in London were the
25 ones that had the knowledge concerning a specific documentary

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1 that was done on Yasser Arafat. And they wanted the people in
2 London to testify as to that document --

3 THE COURT: Okay.

4 MS. SHKOLNIK: -- to authenticate it.

5 THE COURT: All right. What other cases?

6 MS. SHKOLNIK: The other case is PriceWaterhouse v.
7 First American Corp.

8 THE COURT: Yeah, but that -- okay. So let's look at
9 PriceWaterhouse.

10 MS. SHKOLNIK: Sure.

11 THE COURT: Because in PriceWaterhouse, Judge Sweet
12 specifically says that it is important to bear in mind that if
13 PriceWaterhouse U.K. could designate a partner employee capable
14 of responding to the subpoena, the instant result would likely
15 be different.

16 MS. SHKOLNIK: Right. But there we're talking
17 about -- it was a nonparty to a British accounting firm that
18 actually had a subsidiary located in New York.

19 THE COURT: It doesn't matter whether there's a
20 subsidiary located.

21 MS. SHKOLNIK: No. They had people that were located
22 in New York as --

23 THE COURT: You have a person located in New York.
24 You have a director.

25 MS. SHKOLNIK: Exactly. And in the same case, there

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1 was the same fact pattern in PriceWaterhouse. And they quashed
2 the subpoena because they said --

3 THE COURT: No, they -- you're not -- but it says that
4 it is important to bear in mind if PWUK could designate a
5 partner, employee capable of responding to the subpoena, the
6 result would be different.

7 MS. SHKOLNIK: And it also says what we cite. I'm
8 just trying to -- which part -- where are you, Your Honor?

9 THE COURT: I'm at the very end of the opinion.

10 MS. SHKOLNIK: Right. It says -- exactly, Your Honor.
11 It says it is important to bear in mind that if PWUK could
12 designate a partner or employee capable of responding to the
13 subpoena who meets the territorial prescriptions of Rule 45 --

14 THE COURT: Right.

15 MS. SHKOLNIK: -- the result would be different. They
16 had people who met the territorial prescription of Rule 45.
17 They just had no knowledge of -- that's just one sentence
18 taking it out of context.

19 If you look -- if you read the entire decision --

20 THE COURT: No. But you have to read footnote 8. It
21 says in the statement above, submission by the parties
22 precludes this possibility, footnote 8. If there does exist a
23 PWUK employee or partner in New York with within a hundred
24 miles who PWUK should designate to testify and who has not
25 already been deposed, the subpoena may be renewed.

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1 This case was all about confusion, massive confusion
2 over whether or not the entity or the person within the hundred
3 miles was PWUK or the actual person. There's nothing in this
4 case that indicates that there was an actual person.

5 MS. SHKOLNIK: PWUS was located here in New York, Your
6 Honor.

7 THE COURT: A person. A human, an actual person.

8 MS. SHKOLNIK: PWUS employs people. PWUS is located
9 in New York, exact same fact pattern. PWUK was the one that
10 had the knowledge. It's the same company, Your Honor.

11 It says here in August of 1997, FAC, that's the third
12 party --

13 THE COURT: Okay.

14 MS. SHKOLNIK: -- served a new subpoena --

15 THE COURT: Okay. I see what you're saying. Okay.

16 But now, so, tell me about your view about Wultz.

17 MS. SHKOLNIK: Wultz 2 you mean, right?

18 THE COURT: Wultz 2.

19 MS. SHKOLNIK: Because Wultz 1 goes in our favor.

20 THE COURT: Well, not exactly, but it's not worth
21 talking about. Wultz 2.

22 MS. SHKOLNIK: Sure. So Wultz 2 basically does not
23 quash a subpoena. And there it doesn't even identify the cases
24 that it relies on.

25 THE COURT: What do you mean by that?

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1 MS. SHKOLNIK: Meaning it just puts out a decision
2 without any sort of precedent for its decision.

3 THE COURT: There's no cases cited?

4 MS. SHKOLNIK: No.

5 THE COURT: Did you actually read the case?

6 MS. SHKOLNIK: Yes. I read it many times because it's
7 the only outlier.

8 THE COURT: You didn't read all the citations?

9 MS. SHKOLNIK: There's no case that it cites that
10 explains its decision nor is there a case that it cites --

11 THE COURT: I just don't understand -- I'm just not
12 following what you're saying.

13 MS. SHKOLNIK: Okay.

14 THE COURT: The discussion begins at star 99. And
15 there's all these cases that Judge Scheindlin cites to.

16 MS. SHKOLNIK: Star 99.

17 THE COURT: I just don't understand what you mean that
18 there's no case citations.

19 MS. SHKOLNIK: I'm trying to find star 99, Your Honor.
20 One second. Can you give me the --

21 THE COURT: I don't -- page 8. And, I mean, in the
22 printout you gave me, it's page 8. It says despite -- and --

23 MS. SHKOLNIK: Right. Despite its --

24 THE COURT: Despite its nonparty status, Hapoalim has
25 an affirmative duty to prepare the designee to the extent

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1 matters are reasonably available, whether from documents, past
2 employees, or other sources. That's exactly what we have here.
3 We have documents. We have a past director. And we have other
4 sources. And there's a citation.

5 MS. SHKOLNIK: That case does not stand for the
6 proposition that --

7 THE COURT: Well, you can't tell me that there's no
8 citations when there are citations.

9 MS. SHKOLNIK: Maybe I wasn't clear, Your Honor.
10 There's no citation here -- there's no case law that it relies
11 on to support its position that a motion to quash should not be
12 granted under similar facts. There's not a single case. It
13 doesn't -- it does not distinguish -- for example, it doesn't
14 distinguish the entire line of cases --

15 THE COURT: It doesn't have to. She did not have to
16 because the way that Judge Scheindlin analyzes this is not
17 complicated by all of the extraneous factors. There is
18 somebody within the 100 miles and then there are people in
19 Israel who are available to educate that person. And you can
20 do it by phone or you can do it by video or you can do it by
21 email or you can do it by documents. Done. It's just --

22 MS. SHKOLNIK: The issue there, Your Honor, it
23 specifically says -- she specifically says that she is not --
24 this does not overrule the Wultz 1 decision where in Wultz 1 --

25 THE COURT: She didn't need to. You don't -- a judge

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1 is not going to go -- she's not going to go out of her way to
2 overrule the other decision. This subpoena came before her.
3 It was narrowed.

4 MS. SHKOLNIK: Significantly narrowed.

5 THE COURT: Okay. But if you want to talk about
6 narrowing, if that's what it's about, I'll talk to you about
7 narrowing. But you're talking about everything but narrowing.
8 You're telling me I should follow decisions from other
9 jurisdictions when I have a decision that is completely and
10 thoroughly point from down the street and that you've just said
11 is an outlier and said doesn't have any authorities. And yet
12 there is a bunch of cases cited.

13 MS. SHKOLNIK: Your Honor, there are a number of
14 decisions from this court, including PriceWaterhouse v. First
15 American, including Sokolow v. Palestine Liberation, that
16 follow our fact pattern and that quash the subpoena. And
17 there's no obligation in those cases where they say just
18 because there is some person within the hundred miles of the
19 courthouse, that someone -- if they don't have knowledge,
20 there's no obligation that someone else has to go ahead and
21 give them that knowledge.

22 THE COURT: There is no case that causes the
23 1,000-mile limit to be applied in such a way as to relieve a
24 party of its obligation under Rule 30(b)(6). It makes no sense
25 to do that. If there is a person within a hundred miles, then

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1 that person is within a hundred miles. The fact that you need
2 to educate them, that just is what it is. They're not asking
3 me to require that you produce -- that you bring someone from
4 Europe here. They're not asking that I force you to let them
5 go to Europe and take a deposition pursuant to a subpoena
6 issued by this Court. I suppose they would have to do letters
7 rogatory or something of that sort which is costly and time
8 consuming. A foreign representative doesn't have resources.

9 But the one thing that you haven't said -- you've
10 completely ignored the notion that there's a duty to educate
11 unless it imposes an undue burden. You haven't told me
12 anything about an undue burden.

13 MS. SHKOLNIK: Of course -- we've said that -- we've
14 argued that in the papers.

15 THE COURT: No. But saying something and convincingly
16 arguing it are two different things.

17 MS. SHKOLNIK: Sure.

18 THE COURT: You've got Mr. Leand and you've got the
19 documents produced by bondholders in this case that show
20 Seadrill's involvement in the conduct alleged during the --
21 during relevant time period.

22 MS. SHKOLNIK: I disagree with that, Your Honor. I
23 don't think --

24 THE COURT: You disagree with that, that we don't have
25 those documents?

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1 MS. SHKOLNIK: I disagree with that. But I don't want
2 to --

3 THE COURT: Ms. Shkolnik, you disagree with what?

4 MS. SHKOLNIK: With your conclusion of what those
5 documents show. But I don't want -- I think that's --

6 THE COURT: The documents do not show that Mr. Leand
7 was in correspondence with the bondholders and was actively
8 engaged in formulating a game plan on what to do when the
9 bondholders took over the rigs?

10 MS. SHKOLNIK: I think, Your Honor, that that question
11 is a red herring that has nothing to do with the issues in
12 front of the Court today which is on --

13 THE COURT: I'm asking you a simple question. Do
14 you --

15 MS. SHKOLNIK: I haven't analyzed those documents.

16 THE COURT: Have you looked at them?

17 MS. SHKOLNIK: Of course I have.

18 THE COURT: Okay. So there is a connection -- there
19 is a basis for this -- for Seadrill -- for Preforadora's topics
20 in its subpoena. There's a --

21 MS. SHKOLNIK: I don't agree with that in the sense
22 that I feel the topics are very broad. I also think it would
23 be an extreme burden to go ahead and try to educate --

24 THE COURT: Why is it an extreme burden here --

25 MS. SHKOLNIK: Sure.

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1 THE COURT: -- and not categorically? In other words,
2 here -- let me tell you what an extreme burden is.

3 MS. SHKOLNIK: Sure.

4 THE COURT: I preside over Lehman Brothers, okay, in
5 my spare time. That's what I do. It would be an extreme
6 burden to find someone who was with Lehman at the time of the
7 filing, right, or in 2006 and to find people to educate someone
8 on a topic from thirteen years ago. Okay? It would be an
9 extreme burden if there were a successor company and there were
10 literally no one around who had anything to say about the
11 topics that people were interested in.

12 Mr. Leand is literally in the neighborhood. And the
13 documents already exist. So when the Rule talks about -- and
14 the case law talks about there being no requirement of personal
15 knowledge, that exactly contemplates a situation that somebody
16 with knowledge would educate somebody who doesn't have
17 knowledge. Mr. Leand has knowledge. Mr. Leand can get on the
18 phone or on a video conference with the current director and
19 impart his knowledge. And, therefore, that person then becomes
20 a designee who can speak for the corporation. That's what the
21 rule is.

22 MS. SHKOLNIK: Let's talk about, Your Honor, about the
23 two individuals that are here for --

24 THE COURT: We can stipulate they know nothing about
25 it. I'm not going to argue with you on that. I take you at

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1 your word; you made submissions; they came in after the fact.
2 But there's nothing in the case law that says that a person
3 with no knowledge -- that you win if all you can show is that
4 the proposed designee has no knowledge. The cases say, I'll
5 read --

6 MS. SHKOLNIK: Actually, Your Honor, we were just
7 talking about burdens, so I want to respond to your question,
8 because you said that I didn't convince you why it would be
9 burdensome.

10 THE COURT: Okay. Go ahead.

11 MS. SHKOLNIK: And I think we're talking in course
12 purposes too, because Mr. Leand is not someone that Seadrill
13 employs at this time. So as far as I'm concerned, he's out of
14 the picture.

15 When we talk about the two nonexecutive directors who
16 are here within a hundred miles, what Your Honor is suggesting
17 that it would be an easy task for someone from -- it would have
18 to be someone from London or Norway to educate --

19 THE COURT: Yes.

20 MS. SHKOLNIK: -- one of these individuals on, for
21 example, the rigs, how they operate, on the debtors --

22 THE COURT: No, no --

23 MS. SHKOLNIK: -- on the agreement -- it's like
24 educating me on how these rigs operate. That would probably
25 take weeks. I don't know anything about how rigs operate.

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1 They're asking for specific information about that. That would
2 take a long time to do. And there's nothing in the case law,
3 Your Honor, that gives an affirmative duty for us to do that,
4 is what I'm saying with the --

5 THE COURT: I don't know -- I don't know what your
6 basis is for saying that. The rule says that --

7 MS. SHKOLNIK: My basis for saying that is all the
8 cases --

9 THE COURT: -- there is no -- there is -- the case
10 law -- the cases are clear that say that personal knowledge is
11 not a requirement; it contemplates an education process.

12 MS. SHKOLNIK: And there's not a single case with the
13 exception of Walt's Two (ph.) where there's an education
14 process. And they had -- the foreign representative had eleven
15 days to find another case that supports Walt's Two --

16 THE COURT: Okay. Why don't you take --

17 MS. SHKOLNIK: -- and they did not do --

18 THE COURT: -- why don't you take a seat --

19 MS. SHKOLNIK: -- so.

20 THE COURT: -- and why don't I answer. So you're
21 saying, under the rule --

22 MS. SHKOLNIK: Yes.

23 THE COURT: -- Rule 30(b)(6) does not require the
24 education of a corporate designee? Either there's somebody who
25 knows stuff or game over.

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1 MS. SHKOLNIK: I'm saying Rule 30(6)(b) read together
2 with Rule 45(c), that provides the territorial limitations, has
3 been interpreted by one case after another, after another, with
4 the exception of Walt's Two, that specifically says there is no
5 duty to go ahead and provide knowledge to individuals who are
6 within the hundred miles of the courthouse, simply because
7 they're within the hundred miles. The only case, and it's an
8 outlier, because it's the only case that we found, and it's a
9 case that we found and distinguished in our papers that says
10 that. And the foreign representative has not --

11 THE COURT: How did you distinguish it?

12 MS. SHKOLNIK: We distinguished it a number of ways,
13 Your Honor. First of all, it doesn't rely -- it doesn't go
14 ahead and distinguish any of the cases that came before.

15 THE COURT: Why would it? Why would it? Why --

16 MS. SHKOLNIK: Because its decision is completely
17 contrary to everything that came before. So one would expect
18 that the Court --

19 THE COURT: Let me tell you something about
20 jurisdiction, okay. I'm not required to sit here and
21 distinguish cases from North Carolina and North Dakota and
22 California and Washington D.C.

23 MS. SHKOLNIK: I agree, Your Honor. But --

24 THE COURT: Okay. Just --

25 MS. SHKOLNIK: -- these were Southern District of New

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1 York cases.

2 THE COURT: Have a seat.

3 Okay. Mr. Pulecio-Boek, am I hearing from you?

4 MR. PULECIO-BOEK: Yes.

5 THE COURT: Could you help me out here, because Ms.
6 Shkolnik seems very, very clear that the process of educating a
7 30(b)(6) deponent in a Rule 45 framework is crazy, nowhere
8 supporting the cases. Would you help me out?

9 MR. PULECIO-BOEK: Yes, Your Honor. We cite a number
10 of cases in our brief. I can just refer quickly to five of
11 those here.

12 THE COURT: Sure.

13 MR. PULECIO-BOEK: Cody (ph.), Springs (ph.), Erins
14 (ph.), Murphy (ph.), and the Burton (ph.). We think those five
15 cases are -- they are helpful to the extent that they have some
16 rulings that are applicable to this case.

17 So one, they explicitly have language saying that the
18 personal knowledge is of no consequence when preparing any
19 witness for a 30(b)(6) deposition.

20 THE COURT: Right, but are those Rule 45 cases?

21 MR. PULECIO-BOEK: They did not specifically cite the
22 Rule 45. They're general 30(b)(6) cases.

23 THE COURT: Right. I think that's -- I think that's
24 the point. I mean, I think when I strip all this away, is
25 that -- the argument that's being made is that, in the general

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1 context of Rule 30(b)(6), there's a duty to educate. But when
2 you layer over the hundred-mile geographical limitation, that
3 somehow -- if the only people with knowledge are outside the
4 one hundred miles, then the duty to educate falls away. I'm
5 just trying to --

6 MR. PULECIO-BOEK: Well, in that regard, Walt's Two is
7 very helpful because Walt's Two lays out three rules for
8 determining whether it is burdensome or not to prepare someone
9 that has no personal knowledge and is within the hundred-mile
10 radius: one, the scope of the deposition topics; second,
11 whether the deposition is relevant; and then third, the period
12 of time.

13 These are here first, Your Honor, approved the topics
14 of the deposition when we served a group -- requested
15 authorization to serve the notice. And as you've seen, their
16 narrative tailored. And it's basically three topics, as we
17 summarized it in our brief: one, the debtors; second, the
18 contracts and the assets of the debtors, meaning the rigs; and
19 three, efforts by Pemex to amend or terminate those contracts.

20 THE COURT: Okay. So you're not asking -- you're not
21 asking Seadrill's 30(b)(6) designee to explain to you how the
22 rigs work?

23 MR. PULECIO-BOEK: Correct.

24 THE COURT: To pick up on Ms. Shkolnik's example,
25 right?

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1 MR. PULECIO-BOEK: That's right, Your Honor. It's
2 narrowly tailored to the topics in the (indiscernible). And if
3 I may add just another few other points on burden. One, they
4 produce so far about 945 documents. We don't think -- they
5 haven't told us that they're going to be producing much more
6 than that, so the universe of documents --

7 THE COURT: Well, then, what happened to the dispute
8 over the search terms?

9 MR. PULECIO-BOEK: For now, we've reached -- for now,
10 we've reached the agreement on search terms and custodians.
11 The productions are ongoing. The representative -- they will
12 finish producing in about two or three weeks. But for now,
13 they've produced 945 documents, so now, we have a universe of
14 documents in which the designee would have to be deposed.
15 Second, it's a thirteen-month period of time. Three, it -- all
16 the documents are in English. There wouldn't be any issues
17 regarding translations. Forth, either Mr. Leand or the two
18 directors would not need to travel because he can just get on
19 the phone, review the documents that are here --

20 THE COURT: Well, their position is that -- forget
21 about Mr. Leand. He's not going to participate in this at all.
22 So that seems to be part of the argument going to burden, is
23 that you folks keep pointing to Mr. Leand, and you know, he
24 doesn't -- he's got nothing to do with this.

25 MR. PULECIO-BOEK: Absolutely, Your Honor. We cite

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1 five cases that go specifically to the point of designating a
2 foreign -- designating former representatives and believes --

3 THE COURT: Yeah, but as I run through with Ms.
4 Shkolnik in some detail, they can designate, but he would have
5 to consent.

6 MR. PULECIO-BOEK: That's correct.

7 THE COURT: I can't force him. So that's where, I
8 think, you know, there's a little wishful thinking on your
9 part.

10 MR. PULECIO-BOEK: Absolutely, Your Honor. Just a
11 couple of points in that regard. One, we've already served the
12 deposition notice on AMA. Mr. Leand will be deposed on those
13 topics and will be familiar with those topics, obviously, and
14 so there would be absolutely no burden for him to do so here as
15 well and be the --

16 THE COURT: But I can't force him to do -- I can't
17 force them to ask, and I can't force him to do it. Right?

18 MR. PULECIO-BOEK: We are a hundred percent aware.
19 And that is why it is their prerogative. If they do not want
20 to designate him --

21 THE COURT: Right.

22 MR. PULECIO-BOEK: -- then they would have to
23 designate whoever is here --

24 THE COURT: Right.

25 MR. PULECIO-BOEK: -- to the extent that it is not

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1 unduly burdensome to educate those two other individuals that
2 are here within the one-hundred-mile radius. So just to follow
3 up on the points regarding burden. Where the documents are
4 located; they are located here, because they're in possession
5 of counsel, who are review -- reviewing them, producing those
6 documents. The documents are in English. Limited number of
7 documents. They cover a very limited period of time.

8 And just a final point in that regard, it is -- they
9 were presented to this Court from the beginning that they were
10 involving him in the facts of the foreign representative is
11 investigating is minimal, if not simply incidental. And so to
12 the extent that that is accurate, then there will be absolutely
13 no burden in educating the witness --

14 THE COURT: Yeah, and that's kind of the -- that's
15 kind of the interesting part of this, is that there definitely
16 has been a sense that they have nothing to do with this, which
17 would suggest there's not that much to talk about, so.

18 MR. PULECIO-BOEK: That is correct, Your Honor. So we
19 just wanted to have those points on burdens. Specific data
20 points on what steps they would have to take to educate the
21 witness. If I may add just one final point; that is, they are
22 producing documents from seven custodians. Four of those seven
23 custodians are the individuals that they've identified as
24 having relevant knowledge and that are located in Norway and in
25 London. And so those four individuals continue being employees

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1 of the company, meaning that to educate the two directors here,
2 they would not have to go to former employees.

3 THE COURT: Right.

4 MR. PULECIO-BOEK: They can just rely on the employees
5 that are currently with the company --

6 THE COURT: Right.

7 MR. PULECIO-BOEK: -- at the time.

8 THE COURT: Right. So Ms. Shkolnik, what about that?
9 Why doesn't that take care of the problem?

10 MS. SHKOLNIK: Which is? I'm not --

11 THE COURT: You have current employees who can prepare
12 the current directors.

13 MS. SHKOLNIK: Because it would be a burden to those
14 current employees to prepare directors that have no knowledge
15 about the topics at all. If I could --

16 THE COURT: But you -- but see that's the part that
17 I -- you're using that as a mantra without putting any meat on
18 the bones.

19 MS. SHKOLNIK: Okay.

20 THE COURT: Okay? The cases say that it's not enough
21 just to say a person has no knowledge. The rule requires that
22 you educate and make the person into a knowledgeable witness.
23 That's what it requires. So if you have knowledgeable
24 witnesses, which in the correspondence that Mr. Boek attaches
25 to his -- Mr. Pulecio, attaches to his declaration shows that,

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1 in fact, at one point you discussed various individuals from
2 abroad. They can get on the phone with your directors and just
3 walk them through the documents. That's all that we're talking
4 about here. It's not burdensome. Some of the cases talked --
5 find that it's not burdensome for there to be a five-year time
6 period. You're making it definitional. You're saying that, as
7 long as I have to take -- educate someone who at this moment
8 has no knowledge, that's an undue burden. That's not what the
9 cases say.

10 MS. SHKOLNIK: The cases, Your Honor, say what you
11 said earlier, which is, when you look at Rule 45 in conjunction
12 with Rule 30(b)(6), the one-hundred-territorial limit applies.

13 THE COURT: Yes.

14 MS. SHKOLNIK: The cases that apply Rule 30(b)(6) and
15 Rule 45 with the exception of Walt's all say that you do not
16 have to give knowledge to that person who does not have
17 knowledge. And just because that person happens to be within a
18 hundred miles of the court, does not mean that you need to ask
19 the third party that's located outside the hundred miles to go
20 ahead and provide that knowledge to the person within the
21 hundred miles.

22 THE COURT: Okay. Well, you're -- you're tell --

23 MS. SHKOLNIK: And -- it -- it --

24 THE COURT: So you're telling me that, as between a
25 decision of the Southern District of New York and decisions

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1 outside the Southern District of New York, I should ignore the
2 decision of the Southern District of New York that is literally
3 on all fours with the facts here, meaning a foreign entity with
4 no business in New York with -- well, with a branch in New
5 York, that was required to, as you put it from square one,
6 educate someone who didn't have knowledge. I mean, that's what
7 you --

8 MS. SHKOLNIK: Sure. Okay.

9 THE COURT: That's what Judge Scheindlin held.

10 MS. SHKOLNIK: But --

11 THE COURT: You're faulting the -- how robust her
12 analysis was. But it stands as a decision of the Southern
13 District of New York, right?

14 MS. SHKOLNIK: Correct, Your Honor. But there are a
15 number of decisions that go to exact opposite --

16 THE COURT: Okay.

17 MS. SHKOLNIK: -- that are also Southern District of
18 New York decisions. But let me talk about Walt's Two
19 because --

20 THE COURT: Well, hold on -- he's still at the
21 lectern. I merely wanted to ask you a question. So if you
22 would, just hold your fire.

23 MS. SHKOLNIK: Okay.

24 THE COURT: Or hold you --

25 MS. SHKOLNIK: Sure.

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1 THE COURT: -- okay?

2 MS. SHKOLNIK: Sure.

3 THE COURT: Okay. Keep going.

4 MR. PULECIO-BOEK: Thank you, Your Honor.

5 THE COURT: Or you know, this is -- I don't mean to be
6 being hard on you or causing you to be frustrated. I just
7 really have this profound sense of, we're really like ships
8 passing in the night here on this, connecting dots that I don't
9 think there's a basis for connecting. But -- go ahead.

10 MR. PULECIO-BOEK: Yup. Just a final point on burden
11 and it is a case that we find helpful and we cited in our
12 papers for the proposition that a company could educate a
13 former director/employee, which is Taylor -- United States v.
14 Taylor. There, the case says of course it's burdensome. There
15 is a burden associated with having to prepare someone to
16 testify on behalf of a corporation. That that burden is -- the
17 decision says it is part of the onus of doing business as a
18 corporation.

19 THE COURT: I mean, the -- it's your -- in your
20 opposition brief, I mean, starting at eleven, and I think Ms.
21 Shkolnik will probably tell me that none of these are Rule 45
22 cases. But they're all -- all about the concept that it's not
23 unduly burdensome to educate a witness without prior knowledge
24 of the relevant facts. That the -- I mean, the cases are
25 legion on that point, and I simply do not understand why the

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1 one-hundred-mile limitation of a Rule 45 subpoena completely
2 abrogates that whole concept of burden. It's apples and
3 oranges. The burden -- you have a person who's within the
4 hundred miles. We put that over there. Over here we have a
5 person within the hundred miles who needs to be educated.
6 Well, how do we analyze whether that's a burden? We analyze
7 whether that's a burden by looking at the cases that analyze,
8 under Rule 30(b)(6), the burden of educating a witness without
9 knowledge. It's got nothing to do with one hundred miles or
10 not. I just am just having a hard time understanding why the
11 two can't, you know, those two programs can't run
12 simultaneously. So -- okay.

13 MR. PULECIO-BOEK: That's it, Your Honor. We didn't
14 have any additional remarks --

15 THE COURT: Okay.

16 MR. PULECIO-BOEK: -- unless Your Honor has any
17 questions about our papers.

18 THE COURT: No, I don't. Thank you. All right. Ms.
19 Shkolnik, are there any additional points you'd like to make?

20 MS. SHKOLNIK: There are, Your Honor.

21 THE COURT: Okay.

22 MS. SHKOLNIK: Thank you. With respect to the cases
23 that the former representative cites -- they cite a dozen
24 cases -- not one case, not one talks about Rule 45.

25 THE COURT: Okay.

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1 MS. SHKOLNIK: With respect to the documents, we've
2 produced a total of 6,688 pages. To me, that's a lot when
3 you're talking about trying to educate someone here who's a
4 nonexecutive director -- they're not even an employee -- about
5 things and topics that they don't anything about.

6 THE COURT: You know, being a director --

7 MS. SHKOLNIK: I took a look at their --

8 THE COURT: -- you know, with great power comes great
9 responsibility. The quote is by the man. Okay. When you sign
10 on as a director of a major corporate entity, you know what,
11 there are responsibilities. So it is what it is, and there are
12 no -- I'm sure they're quite bright individuals, and there is
13 nothing about -- if you put to one side the Rule 45 and you
14 analyze the burden, purely under Rule 30(b)(6), which I think
15 is appropriate -- and I sound like a broken record -- the rule
16 specifically contemplates an education process in circumstances
17 according to the cases, much more broad than what we have here
18 in order to bring a 30(b)(6) deponent up to speed. You're
19 talking about thirteen months on six narrow topics. Any --
20 just, let's look at some of them.

21 MS. SHKOLNIK: Um-hum.

22 THE COURT: Any efforts by any person, including but
23 not limited to the ad hoc group of bondholders, SeaMex or
24 Seadrill, to take over the jackup rigs or the Oro Negro
25 contracts. According to your version of the world, right, you

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1 had nothing to do with this. So the answer to that is going to
2 be nothing. If your version of the facts is -- holds up, then
3 that's going to be a pretty short part of the deposition.

4 Okay?

5 MS. SHKOLNIK: Your Honor, Oro Negro is a direct
6 competitor as of now of SeaMex. So, obviously, there's going
7 to be correspondence that relates to these topics that --

8 THE COURT: To take over the jackup rigs?

9 MS. SHKOLNIK: I don't know.

10 THE COURT: Okay. If there's correspondence related
11 to taking over the jackup rigs, then that's fair game. That's
12 just not -- they're not looking to examine one of your
13 directors generally on, hey, what's your 2019 business plan.
14 That's not what they're doing. This is a narrowly drawn set of
15 topics.

16 Listen, number four, selling, leasing, or chartering,
17 directly or indirectly, the jackup rigs to any person other
18 than Integradora or Preforadora. It's not asking generally
19 what are Seadrill's practices in regarding to operating jackup
20 rigs generally. This is very, very specific.

21 MS. SHKOLNIK: Your Honor, you know just as well as I
22 do that when you go to a deposition, it's never limited.
23 Depositions take a day after another day.

24 Let me give you a parallel because my colleague
25 brought up the -- you asked him about the terms. And he said

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1 for now, we have agreement on the terms. The reason we have
2 agreement on the terms and the reason it's taken so long for us
3 to actually get through this discovery is because, after we had
4 the conference with Your Honor, we went ahead and we basically
5 agreed. They modified their terms, and we agreed to all of
6 their terms with the exception of one. Well, guess what? It
7 brought in the discovery so much with so many nonresponsive
8 documents that it's already created a huge burden on our
9 clients.

10 THE COURT: We're way off the topic of these -- we're
11 way off the topic.

12 MS. SHKOLNIK: We're not, Your Honor. I'll tell you
13 why. Because the documents and the deposition cover the exact
14 same topics. And my client has already spent a ton of money
15 going ahead and reviewing -- preparing --

16 THE COURT: Your client could have saved money by
17 complying with the subpoena instead of going through this,
18 okay? If the documents have been produced and the documents
19 that you produced are responsive -- which it would seem would
20 be the case, right, because you have --

21 MS. SHKOLNIK: Sure.

22 THE COURT: Right. So then you've produced responsive
23 documents. And it is fair for the foreign representative to be
24 able to question the corporation about the documents that it
25 produced. The topics are completely coextensive. So to the

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1 extent that you're in the deposition and Quinn Emanuel begins
2 to go wide -- ranging wide afield, you can stop the deposition
3 and you can call me. I will stand by and back you up a hundred
4 percent if they begin to ask questions that appear focused on
5 uncovering generally Seadrill's business for the purpose of
6 simply finding things about it. That's just -- that's not what
7 this is about.

8 MS. SHKOLNIK: I disagree, Your Honor, that it would
9 be fair for them to be able to do this. What would be fair is
10 to protect my client from the continuous undue burden that it's
11 already sustained, the months of work that it's had to devote
12 on this discovery, all the money it's had to spend on us.

13 THE COURT: Let me go back --

14 MS. SHKOLNIK: And --

15 THE COURT: -- where we were before. I ordered the
16 discovery. I'm not rearguing the entitlement to discovery.
17 You have a different view than I do. And, frankly, my view
18 prevails because I ordered -- I gave the foreign representative
19 the relief that he requested in order to pursue this discovery.
20 So I'm not going to hear reargument on that.

21 The burdens have been multiplied by the way their
22 discovery requests have been responded to. It is very clear
23 that Seadrill doesn't want any part of this. But the documents
24 that have been produced so far shows a connection between the
25 activities of Seadrill and the timeframe that the foreign

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1 representative is interested and the affairs of the foreign
2 debtor. And that's fair game.

3 Here, like in any other Chapter 15, this is not an
4 open-ended so-called fishing expedition. It is pretty narrowly
5 drawn. And, in fact, the -- in the grand scheme of things,
6 when you're talking about issues of this magnitude, the number
7 of documents or the number of pages that you refer to is just
8 not that many. It's not a million-document case. It's just
9 not. A lot of those pages are actually probably duplicate.

10 MS. SHKOLNIK: Your Honor --

11 THE COURT: So why don't you wrap up? Because I want
12 to render -- I want to give you a decision today. And I'm
13 going to need a little while just to fine-tune what I have to
14 say.

15 MS. SHKOLNIK: Sure. So, Your Honor, the reason I
16 raised all of the examination topics is I also wanted to tie
17 that into Wultz 2 which is, like I said, the only case where a
18 subpoena was quashed under the same fact pattern that we have
19 here. And I want to talk about the facts in Wultz 2 and what
20 was permitted.

21 In that case, we had -- it was an antiterrorism case.
22 The Bank of China was the defendant. The plaintiff alleged
23 that the Bank of China was aware of this terrorist and went
24 ahead and enabled the terrorist to send wire transfers.

25 THE COURT: Yes.

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1 MS. SHKOLNIK: And as a result of that, there as an
2 attack in Tel Aviv. The Bank of China's defense was, hold on,
3 we didn't know about this. And you know how we didn't know
4 about this? Let's go ahead and subpoena the Israeli bank and
5 find out whether the Israeli bank allowed wire transfers to go
6 to this terrorist too. And if the Israeli bank, in fact, did
7 allow the money to -- the wire transfers to go, then we, of
8 course, would not have had more knowledge than the Israeli bank
9 about what was going on as far as terrorism.

10 So the judge, at the end of the day when they narrowed
11 the topics, basically narrowed it to the question of whether or
12 not the Bank of -- whether or not the Israeli bank was aware of
13 this terrorist. If they were aware or if they weren't aware,
14 the judge found that this would be an important issue of fact
15 for the jury.

16 THE COURT: Okay.

17 MS. SHKOLNIK: That's not the case that we have here.
18 We're not talking about a narrow question.

19 THE COURT: Sure, we are. We're talking about a
20 narrow question. Here's the narrow question. The narrow
21 question is, what was Seadrill's involvement in efforts by the
22 bondholders to take -- to obtain control of the jackup rigs and
23 what did they do acting in concert with the bondholders and/or
24 Pemex or any other entity in order to effectuate that? The
25 foreign representative believes that it may have a cause of

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1 action against one or more parties arising out of that fact
2 pattern. I don't know what the facts are, but I know what I've
3 seen in the documents.

4 Therefore, exactly to the picture that you just
5 painted for me, that's exactly what the foreign representative
6 is doing here. They're zeroing in on a very discrete set of
7 alleged conducts and actions that occurred within a very narrow
8 period of time in 2017, prior to the filing of the concurso
9 proceeding. And they are seeking to examine Seadrill about its
10 involvement in that. It's just like finding out about whether
11 or not there was a wire transfer. It's just like that.

12 MS. SHKOLNIK: It's not because that's one question.
13 If they want to give us one question --

14 THE COURT: No. They're not -- we're not going to do
15 that. Okay.

16 I'm going to take a break. If you could please come
17 back -- hang around or come back in fifteen minutes. I'm going
18 to read you a decision. Thank you.

19 (Recess from 3:14 p.m., until 3:33 p.m.)

20 THE COURT: Okay, thank you for waiting. There's
21 always a choice after a hearing like this. I could send you
22 away without an answer and take some time to prepare something
23 perfect and fit for publication, or I can read you a bench
24 decision, which is less than perfect but very detailed and will
25 explain my reasoning.

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1 So I'm going to read you a bench decision, the
2 transcript of which will serve as the ruling, which you can
3 attach to an order. And in the event that there becomes a need
4 for a more formal decision with perfect citations, I can do
5 that. But this is going to take a little while because it's
6 ten pages long, so bear with me while I read.

7 So this is a bench decision on the motion to quash,
8 pending before the Court. Background is as follows.

9 On November 13th, 2018, the Court entered an order, a
10 discovery order, at docket number 156, denying in part and
11 granting in part the foreign representative's motion, the
12 discovery motion at docket number 111, for leave to obtain
13 discovery against Seadrill Limited, Fintech Advisory, and
14 SeaMex Limited. The Court denied without prejudice the
15 discovery motion with respect to SeaMex and authorized
16 discovery against Seadrill and Fintech, subject to, quote,
17 preservation of all rights, objections, and defenses, unquote,
18 and as otherwise set forth in the discovery order.

19 On November 14th, 2018, the foreign representative
20 served a subpoena on Seadrill, pursuant to which the foreign
21 representative seeks, among other things, a deposition pursuant
22 to Federal Rule of Civil Procedure 30(b)(6) of Seadrill in New
23 York City on April 3rd, 2019.

24 Parties have engaged in meet-and-confers and in a
25 telephonic conference with Court, but have been unable to reach

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1 a resolution with respect to Seadrill's request that the
2 foreign representative withdraw the subpoena.

3 Foreign representative summarizes the three categories
4 of information he seeks in the deposition of Seadrill's
5 30(b)(6) witness, as follows: one, the debtors; two, the jack-
6 up rigs and the Oro Negro contracts, including efforts by
7 Seadrill or the bondholders to, A, take over the jack-up rigs
8 or to replace Perforadora in the Oro Negro contracts; B, sell
9 or lease the jack-up rigs; and C, redeploy or repurpose the
10 jack-up rigs; and three, any interest or benefit in Pemex's
11 amendments and ultimately purported terminations of the Oro
12 Negro contracts.

13 The foreign representative submits that the scope of
14 the examination is narrow, as is the time period covered, a
15 mere thirteen months from March 2017 to April 2018. He points
16 out that Seadrill has neither argued that the scope of the
17 topics is too broad or that the period is too long.

18 Finally, according to the foreign representative,
19 document production received from Seadrill and Fintech thus far
20 have revealed what it believes to be the presence of a
21 conspiracy between and amongst SeaMex, Seadrill, Fintech, and
22 the bondholders, prior to the commencement of the debtor's
23 concurso mercantil, with respect to management and eventual
24 purchase of the jack-up rigs, once Pemex terminated the Oro
25 Negro contracts.

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1 And the subpoena as issued by the foreign
2 representative is directly relevant to and in furtherance of
3 his exploration of this alleged conspiracy.

4 Parties' positions. Seadrill argues that the subpoena
5 fails to comply with the territorial limits set forth in
6 Federal Rule of Civil Procedure 45 because no Seadrill
7 representative with any knowledge of the deposition topics or
8 of the events at issue resides, is employed, or regularly
9 conducts business in person within one-hundred miles of New
10 York City.

11 While two members of the Seadrill board of directors,
12 Mr. Vogel and Mr. Davis, do reside within one-hundred miles of
13 New York City, Seadrill submits such individuals cannot be Rule
14 36 -- 30(b)(6) witnesses because neither has personal knowledge
15 concerning the examination topics set forth in the subpoena,
16 and each was appointed to the board of Seadrill in July 2018,
17 well after the events at issue.

18 Seadrill submits that educating either of these
19 individuals is not required by applicable law and that it would
20 impose an undue burden on Seadrill to do so. Seadrill
21 acknowledges that its former director, Mr. Paul Leand, is
22 located within the Rule 45 geographical limitation, but it has
23 declined to attempt to designate Mr. Leand as its Rule 30(b)(6)
24 corporate representative. For all of these reasons, Seadrill
25 argues that the subpoena should be quashed.

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1 The foreign representative accurately points out that
2 Mr. Leand would require virtually no preparation in order to
3 testify as Seadrill's corporate representative for purposes of
4 the Rule 30(b)(6) deposition. The foreign representative
5 argues that if Seadrill elects not to designate Mr. Leand as
6 its 30(b)(6) witness, it should not be able to look past Mr.
7 Leand and attempt to claim undue burden in preparing for the
8 deposition of one of its two directors who resides within one-
9 hundred miles of New York City.

10 The foreign representative submits that preparation of
11 one of its outside directors to testify on its behalf would not
12 impose an undue burden on Seadrill because the scope and the
13 time frame of the topics listed in the subpoena are narrowly
14 drawn.

15 Applicable law. Federal Rule of Civil Procedure
16 30(b)(6) provides in relevant part that a party subpoenaed for
17 a deposition testimony, quote, in its notice or subpoena, a
18 party may name as the deponent a public or private corporation
19 or other entity and must describe with reasonable particularity
20 the matters for examination. The named organization must then
21 designate one or more officers, directors, or managing agents,
22 or designate other persons who consent to testify on its
23 behalf, and it may set out the matters on which each person
24 designated will testify.

25 A subpoena must advise a nonparty organization of its

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1 duty to make this designation. The persons designated must
2 testify about information known or reasonably available to the
3 organization. Thus, one court has noted, Rule 30(b)(6) imposes
4 burdens on both the discovering party and the designating
5 party.

6 The party seeking discovery through a Rule 30(b)(6)
7 deposition is required to describe, quote, with
8 particularity -- with reasonable particularity the matters on
9 which examination is requested. Once served with a deposition
10 notice under Rule 30(b)(6), the responding party is required to
11 produce one or more witnesses knowledgeable about the subject
12 matter of the noticed topics. See *Elan Microelectronics*
13 *Corporation v. Pixcir Microelectronics Corporation Limited*,
14 2013 U.S. Dist. LEXIS 114164 at star 13; *Marker v. Union*
15 *Fidelity Life Insurance Company*, 125 F.R.D. 121 at 126, Middle
16 District of North Carolina 1989.

17 Federal Rule of Civil Procedure 45(c)(1)(A) provides
18 that a subpoena may not command a nonparty to attend a
19 deposition beyond, quote, one-hundred miles of where the person
20 resides, is employed, or regularly transacts business in
21 person.

22 Rule 45(d)(3)(A)(ii) further mandates that a court
23 must quash or modify a subpoena if the subpoena, quote,
24 requires a person to comply beyond the geographical limits
25 specified in Rule 45(c).

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1 Rule 45(d)(1) requires that a party, quote, issuing
2 and serving a subpoena must take reasonable steps to avoid
3 opposing -- imposing undue burden or expense on a person
4 subject to a subpoena.

5 Rule 45(d)(3)(A)(iv) further provides that a court
6 must quash or modify a subpoena that, quote, subjects a person
7 to undue burden.

8 Discussion. Ruling on the motion, it appears that the
9 Court is faced with three options: one, quash the subpoena;
10 two, deny the motion to quash and require Mr. Leand, a former
11 director of Seadrill, to testify on Seadrill's behalf; three,
12 deny the motion to quash and require Seadrill to designate
13 either Mr. Davis or Mr. Vogel, the Seadrill directors located
14 within one-hundred miles of New York City, to serve as
15 Seadrill's 30(b)(6) witness, which will involve Seadrill
16 preparing such individual for testimony.

17 Because the Court finds no undue burden in requiring
18 Seadrill to comply with the Rule 30(b)(6) subpoena and no
19 violation of limitations proposed -- imposed by Rule 45 here,
20 the Court declines to quash the subpoena.

21 The Court will discuss each of the second and third
22 options in turn. First, with respect to Mr. Leand, Seadrill
23 asserts vehemently that the foreign representative cites to no
24 case in which a court has compelled a corporate entity to
25 designate a former director, officer, and/or employee to serve

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1 as its rule 30(b)(6) designee. It further submits that the
2 alleged presence of Mr. Leand in New York is irrelevant to this
3 dispute because, as a former director of Seadrill, Mr. Leand is
4 not an appropriate 30(b)(6) designee.

5 Seadrill points out that the foreign representative
6 has already separately served a Rule 30(b)(6) subpoena on AMA
7 Capital Partners, Mr. Leand's present employer, and Mr. Leand
8 personally.

9 In sharp contrast, the foreign representative argues
10 that it is uncontroversial for Mr. Leand, the former director,
11 to serve as Seadrill's corporate deponent, citing to a number
12 of cases in which a former employee of a corporate entity has
13 served as the entity's Rule 30(b)(6) witness. See, e.g., U.S.
14 v. Taylor, 166 F.R.D. 356, Middle District of North Carolina
15 1996; Goguen v. Techtron (ph.) -- Textron, 476 F.Supp.2d. 5,
16 District Massachusetts, 2007.

17 Further, because Mr. Leand is intimately familiar with
18 the facts and events being investigated by the foreign
19 representative, foreign representative asserts that it would
20 not be an undue burden for Seadrill to prepare Mr. Leand for
21 deposition.

22 The Court recognizes that Rule 30(b)(6) permits the
23 corporation named as a deponent to select the individual who
24 will testify on its behalf. Specifically, the rule states in
25 pertinent part that, quote, the named organization must then

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1 designate one or more officers, directors, or managing agents,
2 or designate other persons who consent to testify on its
3 behalf.

4 Courts have noted that the testimony of a Rule
5 30(b)(6) designee, quote, represents the knowledge of the
6 corporation, not of the individual deponents. U.S. v. Taylor
7 166 F.R.D. 356 at 361, Middle District of North Carolina, 1996.

8 A Rule 30(b)(6) designee presents the corporation's
9 position on the noticed topics, and the corporation has a duty
10 under Rule 30(b)(6) to provide a witness who is knowledgeable,
11 in order to provide binding answers on behalf of the
12 corporation. See United States v. Massachusetts Industrial
13 Finance Agency, 162 F.R.D. 410, District of Massachusetts,
14 1995; Starlight International v. Herlihy, 186 F.R.D. 626,
15 District of Kansas 1999.

16 Accordingly, the duty to prepare a Rule 30(b)(6)
17 designee goes beyond matters personally known to the witness or
18 to matters in which the designated witness was personally
19 involved, but also extends to matters reasonably known by the
20 responding party. See Elan Microelectronics Corporation v.
21 Pixcir Microelectrics (sic) Corporation, 2013 U.S. Dist. LEXIS
22 114164 at star 15, District of Nevada, August 7th, 2013 and
23 cases cited therein.

24 Seadrill cites to decisions from certain courts which
25 it says have held that an adequate excuse for an entity's

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1 noncompliance with Rule 30(b)(6) has been that all responsive
2 witnesses are located beyond the one-hundred mile limit imposed
3 by Rule 45. Seadrill argues that the fact patterns in such
4 cases are virtually identical to the facts here. See, e.g.,
5 Krueger Investments LLC v. Cardinal Health 1 -- Cardinal Health
6 110, Inc., 202 WL 326524, District of Arizona 2012; in Re Moose
7 Enterprises Party Limited, 2016 WL 10987320, Central District
8 of California 2016. See also motion in page 9 and reply at
9 page 9.

10 The facts of such cases are distinguishable, however,
11 as they did not involve the presence of potential witnesses
12 located within one-hundred miles who, while not knowledgeable
13 as to the responsive information, at the time of the issuance
14 of the subpoena could, in fact, be educated and prepared by the
15 corporation to testify in a Rule 30(b)(6) deposition as to the
16 designated topics.

17 Notably, in one decision cited by Seadrill, Price
18 Waterhouse v. First American Corporation, the court by Judge
19 Sweet specifically noted that its decision would have been
20 different if the subpoena target, PW-UK, had a partner or an
21 employee within one-hundred miles of the court who possessed
22 knowledge of the matters outlined in the subpoena.

23 As the Price Waterhouse court noted, quote, critical
24 to the instant inquiry is that FAC, the subpoena in pardoned,
25 does not dispute the fact that the subpoena would require PW-UK

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1 to produce, at the offices of FAC's counsel in New York, PW-
2 UK's partners or employees who reside, are employed, and
3 regularly transact business more than one-hundred miles beyond
4 the Rule 45 territorial boundaries of this court. See 182
5 F.R.D. 56, Southern District of New York 1998, parentheses,
6 quote, it is important to bear in mind that if PW-UK could
7 designate a partner or employee capable of responding to the
8 subpoena who meets the territorial prescription of Rule 45, the
9 instant result would most likely be different.

10 In contrast to the cases on which Seadrill relies
11 here, Seadrill has several options with respect to individuals
12 located within one-hundred miles of New York City. It can name
13 either Mr. Leand or Mr. Vogel and Mr. Davis to testify on its
14 behalf. Such options do not run afoul of Rule 45. In fact, in
15 the Court's view, Rule 45 is not implicated here at all.

16 Were Seadrill to select Mr. Leand, a former director,
17 the rule and applicable case law seem clear that, as a former
18 rather than current director of Seadrill, Mr. Leand's consent
19 would be required. There is no indication, however, that Mr.
20 Leand has been asked for his consent. Seadrill does not argue
21 that it would be extraordinarily burdensome to prepare him for
22 a Rule 30(b)(6) deposition on the topics outlined previously.

23 To be clear, Court does not believe it has the
24 authority to direct Seadrill to designate Mr. Leand as its
25 30(b)(6) designee. Assuming arguendo that Seadrill, in fact,

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1 were to select Mr. Leand and he declines to consent, the Court
2 will next address whether Seadrill should then be required to
3 educate either Mr. Vogel or Mr. Davis to serve as its Rule
4 30(b)(6) witness in order to comply with the subpoena.

5 Seadrill argues that Mr. Vogel and Mr. Davis, two of
6 its directors located within the territorial limits of Rule 45,
7 cannot be Rule 30(b)(6) witnesses because neither has knowledge
8 concerning the topics set forth in the subpoena. Seadrill
9 asserts that it has no obligation to educate such individuals
10 about the, quote unquote, wide-ranging topics set forth in the
11 subpoena, as this would be unduly burdensome to Seadrill.

12 Contrary to Seadrill's assertions, courts in this
13 district have held that a nonparty has an affirmative duty to
14 designate and prepare corporate designee in accordance with its
15 duties under Rule 30(b)(6) and that such duty, quote, goes
16 beyond matters personally known to such designee or to matters
17 in which that designee was personally involved. Wultz v. Bank
18 of China Limited, 298 F.R.D. 91, Southern District of New York
19 2014, also known as Wultz II, citing Twentieth Century Fox Film
20 Corporation v. Marvel Enterprises, 2002, WL 1835439, Southern
21 District of New York 2002.

22 If a corporate designee does not possess personal
23 knowledge of the matter set out in the deposition notice,
24 quote, the corporation is obligated to prepare the designees so
25 that they may give knowledgeable and binding answers for the

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1 corporation, and citing Twentieth Century Fox 2002 WL 1835439
2 at star 2.

3 Acknowledging the decision in Wultz II, Seadrill urges
4 the Court to afford it no weigh because Seadrill submits that
5 Wultz II, one, does not cite to a single case to support its
6 ruling and, two, fails to address the multitude of cases in
7 which other courts have determined that it must quash a
8 subpoena under similar circumstances. See Seadrill motion at
9 page 10.

10 Instead, Seadrill points to an earlier decision in
11 Wultz v. Bank of China Limited, or Wultz I, in which a
12 magistrate judge quashed the defendant's subpoena, stating that
13 it would be unreasonable for the target of the subpoena to be
14 required to educate individuals in New York who had no
15 knowledge of the subpoena matters. See Wultz I 293 F.R.D. 677,
16 Southern District of New York, 2013.

17 Far from being an outlier without citations, as argued
18 by Seadrill, Wultz II is a decision squarely on point here,
19 contains ample citations supporting its holding, and was
20 rendered by a court in this district.

21 In Wultz II, the Southern District of New York
22 addressed the exact question at issue here, whether the court
23 can require a nonparty to educate an employee or director
24 located within one-hundred miles of the court to serve as
25 deponent for a Rule third -- for third -- Rule 30(b)(6)

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1 testimony on behalf of a corporate entity. See Wultz II, 298
2 F.R.D. at 98, parentheses, quote, the only issue in question is
3 whether requiring the subpoena target to comply with its
4 affirmative duty to prepare a designee for Rule 30(b)(6)
5 testimony constitutes an undue burden, in light of its
6 assertion that all of the individuals with relevant information
7 or knowledge about the topics reside or work in Jerusalem.

8 In Wultz II, the defendant subpoenaed a nonparty
9 Israeli bank, Bank Hapoalim, which had a branch office in New
10 York. Bank Hapoalim moved the district court to quash the
11 subpoena, based on Rule 45's geographical limitation. Like
12 Seadrill, Bank Hapoalim argued, among other reasons, that it
13 had no employees in New York with any relevant knowledge of the
14 topics listed in the subpoena, and that it would be unduly
15 burdensome to educate any of its employees in New York to
16 testify on its behalf, id. at 95.

17 Citing to other cases in this district, the district
18 court determined that, quote, despite its nonparty status,
19 Hapoalim had an affirmative duty to prepare the designee, to
20 the extent matters are reasonably available, whether from
21 documents, past employees, or other sources, end quote, and
22 that Bank Hapoalim was obligated to prepare its designees so
23 that they may give knowledgeable and binding responses on
24 behalf of the bank, id. at 99, citing cases.

25 Although a magistrate judge had previously determined

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1 to quash the subpoena, the district court -- the court -- the
2 district court determined that the defendant had significantly
3 modified and narrowed the subpoena, following the decision in
4 Wultz I, and therefore it denied Bank Hapoalim's motion to
5 quash, without directly overruling Wultz I. See Wultz II, 298
6 F.R.D. at 94.

7 The district court concluded that, even though all of
8 the bank's documents and knowledgeable persons were in
9 Jerusalem, requiring Bank Hapoalim's compliance with the Rules
10 30(b)(6) subpoena would not impose an undue burden on the bank,
11 when weighed against defendant's need for the testimony.

12 In so holding, the district court noted that, quote, a
13 person in New York can easily be educated by a person in Israel
14 by telephone, email, or videoconference. So too here.

15 In Wultz II, the court held, moreover, that, quote,
16 whether a subpoena imposes an undue burden depends on such
17 factors as relevance, the need of the party for the documents,
18 the breadth of the document, the time period covered by it, and
19 the particularity, and the -- of the documents described, and
20 the burden imposed.

21 Finding these factors here, the Court finds that
22 Seadrill has failed to establish the existence of an undue
23 burden that would arise from compliance with its duties under
24 Rule 30(b)(6), even taking into account that it may be required
25 to educate an outside director who does not currently have

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1 knowledge of the topics set forth in the subpoena.

2 Other than Seadrill's bald assertions that educating
3 Mr. Vogel or Mr. Davis would place, quote, an enormous burden
4 on Seadrill and, quote, that it would have to begin at square
5 one, Seadrill has provided no detailed, compelling arguments as
6 to why it could not comply with its duties under Rule 30(b)(6).

7 Here, the foreign representative seeks to depose
8 Seadrill about seven topics relating to a thirteen-month period
9 from March 7th to April 2018. See Exhibit 1, Pulecio
10 declaration, at Schedule B.

11 In an effort to address some of Seadrill's concerns
12 that the foreign representative not be given carte blanche to
13 inquire into Seadrill's business as a purported competitor of
14 the debtors, the Court directs the foreign representative to
15 strike topic 1 from the subpoena, which is a general inquiry
16 about the debtors.

17 The Court otherwise finds that the six other subpoena
18 topics are appropriately narrow and that educating Mr. Vogel or
19 Mr. Davis about these discreet topics would be neither unduly
20 burdensome to Seadrill nor a daunting task. Seadrill has been
21 presented, both by the foreign representative and now by the
22 Court, with numerous options from which to select, in order to
23 comply with its duties under Rule 30(b)(6).

24 While Seadrill has appeared unwilling to avail itself
25 of any of these options thus far, its compliance will now be

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1 required. For all of the foregoing reasons, the Court denies
2 the motion to quash the subpoena and orders that Seadrill
3 designate a 30(b)(6) witness to testify on its behalf.

4 Seadrill shall inform the foreign representative
5 within seven days of the date hereof of its designation so that
6 the deposition can be scheduled promptly.

7 Any questions?

8 MR. AUSLANDER: No, Your Honor.

9 THE COURT: All right. I would ask that the parties
10 work together on an order and that you make reference and
11 incorporate a transcript of the hearing. And after you both
12 agree on the form of order, submit it to me, and I'll take a
13 look at that.

14 Questions?

15 UNIDENTIFIED SPEAKER: No.

16 THE COURT: Okay.

17 MR. AUSLANDER: Nothing, Your Honor.

18 THE COURT: All right. Thank you very much.

19 IN UNISON: Thank you.

20 MR. AUSLANDER: Thanks, Your Honor.

21 UNIDENTIFIED SPEAKER: Thank you.

22 THE COURT: Thanks, Matt.

23 (Whereupon these proceedings were concluded at 3:58 PM)
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I N D E X

RULINGS:	PAGE	LINE
Seadrill's motion to quash 30(b)(6) is denied	59	1

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C E R T I F I C A T I O N

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I, Michael Drake, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

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Michael Drake (CER-513, CET-513)

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AAERT Certified Electronic Transcriber

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eScribers

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352 Seventh Ave., Suite #604

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New York, NY 10001

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Date: March 21, 2019

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